

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ORLANDO V. WILLIAMS, [Pro Se]	)	CASE NO. _____
)	
Plaintiff,	)	COMPLAINT FOR DAMAGES
	)	FOR PERSONAL INJURY
vs.)	
	)	(1) 42 U.S.C. § 1981, via 42 U.S.C.
1960 FAMILY PRACTICE PA, ET AL.;	)	§ 1983 RACE DISCRIMINATION
GABRIELLE WUDARSKI, as a PA/F;	)	(2) 42 U.S.C. § 1981, via 42 U.S.C.
FRANCISCO ORTIZ, as a MD; DANG	)	§ 1983 RETALIATION
H. PHAM, as a MD; MADELINE A.	)	(3) § 504 OF THE
HUNT, as a MD; TARA A. HAGOPAIN,	)	REHABILITATION ACT OF
as a D.O. Neuroradiologist;	)	1973, CODIFIED IN 29 U.S.C.
	)	§ 794 DISABILITY
vs.	)	DISCRIMINATION
	)	(4) § 504 OF THE
UNIVERSITY OF TEXAS MD	)	REHABILITATION ACT OF
ANDERSON CANCER CENTER;	)	1973, CODIFIED IN 29 U.S.C.
KRYSTAL J. KIMIAGAREE, as a PA;	)	§ 794 RETALIATION
JUSTIN E. BIRD, as a MD;)	
)	
vs.	)	DEMAND FOR JURY TRIAL
)	
HOUSTON METHODIST HOSPITAL;)	
TAREK SALAH RAFATI, as a MD;)	
)	
Defendants.)	

COMES NOW Orlando V. Williams (hereinafter "Williams" or "plaintiff") appearing *pro se*, files Complaint for cause of actions against Defendants ("defendants"), 1960 Family Practice PA, et al., Gabrielle Wudarski, Francisco Ortiz, Dang H. Pham, Madeline A. Hunt, Tara A. Hagopain, University of Texas MD Anderson Cancer Center, Krystal J. Kimiagaree, Justin E. Bird, Houston Methodist Hospital, and Tarek Salah Rafati, each of them, alleged herein violate

42 U.S.C. § 1981 ("§ 1981"), by and through 42 U.S.C. § 1983, on the bases of race discrimination and retaliation,¹ as well as § 504 of the Rehabilitation Act of 1973, codified in 29 U.S.C. § 794 (the "Rehabilitation Act") on the bases of disability discrimination and retaliation,² and herein alleges, based on information and belief:

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¹See Ex. A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK & LL.

²See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

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JURISDICTION & VENUE

1. This court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. §§ 1331 and 1343, as well as 28 U.S.C. § 1367(a).³ Venue is therefore proper pursuant to 28 U.S.C. §§ 1391(b)(1) and/or 1391(b)(2).⁴
2. This is a civil action authorized by 42 U.S.C. § 1983 to redress the deprivation, every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.⁵

PARTIES

3. The plaintiff Orlando V. Williams. The plaintiff Mr. Williams is a citizen of United States.⁶
4. At all relevant times, the defendant, 1960 Family Practice PA ("1960FPPA") was and is a corporation and existing under the

³See Ex. A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK & LL.

⁴See Ex. A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK & LL.

⁵See Ex. A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK & LL.

⁶See *Orlando V. Williams v. Alabama Department of Corrections, et al.*, 4:12-cv-4043-KOB, Doc. 37, at Ex. A.

laws of the State of Texas and authorized to do and doing business within the State of Texas, including in the County of Harris within the meaning of § 1981.⁷ Defendant 1960FPPA is being sued in its official capacity.

5. At all relevant times, the defendant, Gabrielle Wudarski ("WUDARSKI") was and is an employee at 1960FPPA.⁸ Plaintiff is informed and believes, and herein alleges that defendant WUDARSKI was at all times herein relevant, the PA/F on or about February 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321] within the meaning of § 1981.⁹ Defendant WUDARSKI is being sued in her individual capacity.
6. At all relevant times, the defendant, Francisco Ortiz ("ORTIZ") was and is an employee at 1960FPPA.¹⁰ Plaintiff is informed and believes, and herein alleges that defendant ORTIZ was at all times herein relevant, the MD on or about February 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321] within the meaning of § 1981.¹¹ Defendant ORTIZ is being sued in his individual capacity.
7. At all relevant times, the defendant, Dang H. Pham ("PHAM") was and is an employee at 1960FPPA.¹² Plaintiff is informed and

⁷See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK, LL, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁸See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁹See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁰See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹¹See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹²See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

believes, and herein alleges that defendant PHAM was at all times herein relevant, the MD on or about February 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321] within the meaning of § 1981.¹³ Defendant PHAM is being sued in his individual capacity.

8. At all relevant times, the defendant, Madeline A. Hunt ("HUNT") was and is employee at 1960FPPA.¹⁴ Plaintiff is informed and believes, and herein alleges that defendant HUNT was at all times herein relevant, the MD on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745] within the meaning of § 1981.¹⁵ Defendant HUNT is being sued in her individual capacity.

9. At all relevant times, the defendant Tara A. Hagopain ("HAGOPAIN") was and is an employee at 1960FPPA.¹⁶ Plaintiff is informed and believes, and herein alleges that defendant HAGOPAIN was at all times herein relevant, the D.O. Neuroradiologist on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745] within the meaning of § 1981.¹⁷ Defendant HAGOPAIN is being sued in her individual capacity.

¹³ See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁴ See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁵ See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁶ See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁷ See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

10. At all relevant times, the defendant, University of Texas MD Anderson Cancer Center ("MD Anderson") was and is a corporation and existing under the laws of the State of Texas and authorized to do and doing business within the State of Texas, including in the County of Harris within the meaning of § 504 of the Rehabilitation Act.¹⁸ Defendant MD Anderson is being sued in its official capacity.
11. At all relevant times, the defendant, Krystal J. Kimiagaree ("KIMIAGAREE") was and is an employee at MD Anderson.¹⁹ Plaintiff is informed and believes, and herein alleges that defendant KIMIAGAREE was at all times herein relevant, the PA on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approximately ("approx.") 1:39 p.m. within the meaning of § 1981.²⁰ Defendant KIMIAGAREE is being sued in her individual capacity.
12. At all relevant times, the defendant, Justin E. Bird ("BIRD") was and is an employee at MD Anderson.²¹ Plaintiff is informed and believes, and herein alleges that defendant BIRD was at all times herein relevant, the MD on or about May 9, 2019 OSI MRI –

¹⁸See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁹See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

²⁰See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

²¹See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

Details [MRN: 2371211] at approx. 1:39 p.m. within the meaning of § 1981.²² Defendant BIRD is being sued in his individual capacity.

13. At all relevant times, the defendant, Houston Methodist Hospital ("HMH"), acted through its agency, Houston Methodist Primary Care Group ("HMPCG") within the meaning of § 1981.²³ Defendant HMH is being sued in its official capacity.

14. At all relevant times, the defendant, Tarek Salah Rafati ("RAFATI") was and is an employee at HMH, acted through its agency, HMPCG.²⁴ Plaintiff is informed and believes, and herein alleges that defendant RAFATI was at all times herein relevant, the MD on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008] within the meaning of § 1981.²⁵ Defendant RAFATI is being sued in his individual capacity.

²²See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

²³See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

²⁴See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

²⁵See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

FIRST CAUSE OF ACTION – 42 U.S.C. § 1981, via § 1983
COUNT I
DEPRIVATION OF PLAINTIFF'S FEDERAL STATUTORY
RIGHTS
FOURTEENTH AMENDMENT
(RACE DISCRIMINATION)
Against Defendants, 1960FPPA, WUDARSKI, ORTIZ, PHAM,
HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and
RAFATI²⁶²⁷

15. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.
16. In failing the plaintiff *experienced an adverse action* on or about February 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321]²⁸ and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745]²⁹ and on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.³⁰ and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008],³¹ and instead promoting less-qualified white patients on the bases of MRIs, i.e., thoracic, spine w/wo contrast

²⁶As for plaintiff § 1981 claim against defendants, 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, in their official capacity and/or individual capacity, plaintiff is correct that such a claim can only be alleged through 42 U.S.C. § 1983. *See Oden v. Oktibbeha Cty., Miss.*, 246 F.3d 458, 462-63 (5th Cir. 2001) ("plaintiffs must assert a cause of action against state actors under § 1983 to remedy violations of civil rights under § 1981"). *See Daniels v. Univ. of Tex. MD Anderson Cancer Ctr.*, CIVIL ACTION NO. H-16-2473, at *5 (S.D. Tex. Feb. 26, 2019). § 1981 does not provide a cause of action against state actors; instead, claims against state actors or allegations of § 1981 violations must be brought pursuant to 42 U.S.C. § 1983. *See Butts v. County of Volusia*, 222 F.3d 891, 892-94 (11th Cir. 2000).

²⁷*See* Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

²⁸*See* Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

²⁹*See* Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

³⁰*See* Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

³¹*See* Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

and lumbar, spine w/wo contrast,³²³³ and defendants 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, and RAFATI, each of them, *intentionally* and *willfully* discriminated against plaintiff due to his race, African-American,³⁴³⁵³⁶ in violation of § 1981, via 42 U.S.C. § 1983.³⁷ White and black patients were not treated similarly on the bases of MRIs, i.e., thoracic, spine w/o contrast and lumbar, spine w/wo contrast.³⁸³⁹

17. Said action of defendants 1960FPPA, SALEMI, DEVOS, CARY, OSER, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN,

³²Defendants 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, *treated similarly situated white patients outside his classification more favorably* on the bases of MRIs, i.e., spine w/o contrast and lumbar, spine w/wo contrast. A plaintiff can establish a prima facie case of racial discrimination by: to make or arrange for the disclosures required by Fed. R. Civ. P. 26(a)(1); and to develop a proposed discovery plan that indicates the parties' views and proposals concerning all of the matters addressed in sub-paragraphs (1) through (4) of Fed. R. Civ. P. 26(f).

³³*See* Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

³⁴*Plaintiff belongs to a racial minority.*

³⁵*See Orlando V. Williams v. Alabama Department of Corrections, et al.*, 4:12-cv-4043-KOB, Doc. 37, Ex. A.

³⁶*See* Ex. T & BB.

³⁷*See* Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

³⁸Defendants 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, plaintiff *was discriminated against him as an African-American male by giving him unfavorable patients assignments-similarly situated or not-who were treated more favorably in patients assignment* on the bases of MRIs, i.e., thoracic, spine w/o contrast and lumbar, spine w/wo contrast. A plaintiff can establish a prima facie case of racial discrimination by: to make or arrange for the disclosures required by Fed. R. Civ. P. 26(a)(1); and to develop a proposed discovery plan that indicates the parties' views and proposals concerning all of the matters addressed in sub-paragraphs (1) through (4) of Fed. R. Civ. P. 26(f).

³⁹*See* Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, were taken with *malice* or *reckless indifference* to the federally-protected and Constitutional rights of plaintiff on the bases of equal protection clause, i.e., nor deny to any person within its jurisdiction the equal protection of the laws of the Fourteenth Amendment on or about February 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321]⁴⁰ and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745]⁴¹ and on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.⁴² and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008].⁴³

18. As a *proximate* consequence of the violations of § 1981, via 42 U.S.C. § 1983, by defendants 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, plaintiff suffered and continues to suffer bodily injuries such as pain and will continue to suffer damages to his professional life and future career opportunities, future pecuniary losses, emotional pain, inconvenience, mental anguish, loss of enjoyment in life, and non-pecuniary damages.⁴⁴

⁴⁰ See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁴¹ See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁴² See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁴³ See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

⁴⁴ See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

19. As a *proximate* consequence of the violations of § 1981, via 42 U.S.C. § 1983, by defendants 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, plaintiff's personal property was loss, damaged or destroyed.⁴⁵
20. Plaintiff has satisfied all administrative prerequisites to bring this claim outlined herein.⁴⁶⁴⁷⁴⁸

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, plaintiff prays for judgment against defendants, 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, on all cause of action as follows:

- a. For special damages for placement in the position(s)
in which he would have worked absent defendants
WUDARSKI, ORTIZ, PHAM, HUNT,

⁴⁵*See* Ex. KK & LL.

⁴⁶In *Patsy v. Board of Regents* the Supreme Court held that 42 U.S.C. § 1983 does not require exhaustion of state administrative remedies. Also, in *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982), the Supreme Court determined that there is no general exhaustion of remedies requirement for plaintiff's pursuing claims under 42 U.S.C. § 1983.

⁴⁷§ 1981 does not provide a cause of action against state actors; instead, claims against state actors or allegations of § 1981 violations must be brought pursuant to 42 U.S.C. § 1983. *See Butts v. County of Volusia*, 222 F.3d 891, 892-94 (11th Cir. 2000). However, a four-year statute of limitations applies to "civil action[s] arising under an Act of Congress enacted after" December 1, 1990. *See* 28 U.S.C. § 1658(a). In this case, Williams's § 1981 claims were made possible by the 1991 amendments to § 1981; thus, those claims arise under a post-1990 enactment. *See Jones v. R.R. Donnellev & Sons Co.*, 541 U.S. 369, 124 S. Ct. 1836 (2004).

⁴⁸*See* Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

HAGOPAIN, KIMIAGAREE, BIRD, and RAFATI, each of them, discriminatory treatment on or about February 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321] and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745] and on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m. and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008];⁴⁹ or, in lieu thereof, front pay according to proof;⁵⁰

- b. For post-judgment interest as allowed by law;
- c. For costs of suit incurred herein;
- d. For special damages for back pay according to proof;⁵¹
- e. For general damages in the amount of not less than \$50,000,000 jointly against defendants, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, and RAFATI, each of them, for endured physical pain,

⁴⁹See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

⁵⁰See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

⁵¹See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

emotional suffering, mental anguish, embarrassment, loss of enjoyment, both past and future according to proof;⁵²

f. For personal property was loss, damaged or destroyed according to proof;⁵³ and

g. Such other legal or equitable relief, including injunctive relief, as may be appropriate to effectuate of § 1981, via 42 U.S.C. § 1983 enjoining defendants 1960FPPA, and HMM, each of them, their agents, successors, employees, attorneys, and those acting in concert with defendants 1960FPPA, and HMM, each of them, or at defendants 1960FPPA, and HMM, each of them, request from violating § 1981, via 42 U.S.C. § 1983, or to which he may be entitled.⁵⁴

⁵²See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

⁵³See Ex. KK & LL.

⁵⁴See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

SECOND CAUSE OF ACTION – 42 U.S.C. § 1981, via § 1983
COUNT II
DEPRIVATION OF PLAINTIFF'S FEDERAL STATUTORY
RIGHTS
FIRST AMENDMENT
(RETALIATION)
Against Defendants, 1960FPPA, WUDARSKI, ORTIZ, PHAM,
HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and
RAFATI⁵⁵⁵⁶

21. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.

22. In taking the actions alleged herein, defendants 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, *intentionally* and *willfully* retaliated against plaintiff on or about February 8, 2019 MRI addendum lumbar, spine w/wo contrast [PTC026321]⁵⁷ and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745]⁵⁸ and on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.⁵⁹ and on or

⁵⁵As for plaintiff § 1981 claim against defendants, 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, in their official capacity and/or individual capacity, plaintiff is correct that such a claim can only be alleged through 42 U.S.C. § 1983. *See Oden v. Oktibbeha Cty., Miss.*, 246 F.3d 458, 462-63 (5th Cir. 2001) ("plaintiffs must assert a cause of action against state actors under § 1983 to remedy violations of civil rights under § 1981"). *See Daniels v. Univ. of Tex. MD Anderson Cancer Ctr.*, CIVIL ACTION NO. H-16-2473, at *5 (S.D. Tex. Feb. 26, 2019). § 1981 does not provide a cause of action against state actors; instead, claims against state actors or allegations of § 1981 violations must be brought pursuant to 42 U.S.C. § 1983. *See Butts v. County of Volusia*, 222 F.3d 891, 892-94 (11th Cir. 2000).

⁵⁶*See* Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

⁵⁷*See* Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁵⁸*See* Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁵⁹*See* Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008]⁶⁰ in violation of his rights protected by § 1981,⁶¹ including plaintiff rights to his speech or act, i.e., petitioning for a government redress of grievance of the First Amendment on or about February 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321]⁶² and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745]⁶³ and on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:27 p.m.⁶⁴ and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008],⁶⁵ and which is attached as Exhibits A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK and LL to this Complaint.

23. Said actions of defendants 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, were *aware* when they deprived the plaintiff of his guaranteed statutory rights on or about February 8, 2019 MRI addendum lumbar, spine w/wo contrast

⁶⁰See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

⁶¹See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

⁶²See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁶³See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁶⁴See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁶⁵See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

[PTC026321]⁶⁶ and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745]⁶⁷ and on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.⁶⁸ and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008]⁶⁹ were taken with *malice* or *reckless indifference* to the federally-protected and Constitutional rights of plaintiff on the bases of his speech or act, i.e., right to petition government for redress of grievance of the First Amendment on or about February 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321]⁷⁰ and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745]⁷¹ and on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:27 p.m.⁷² and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008].⁷³

24. Defendant 1960FPPA, acted through its employees *alleged conduct* – retaliated on or about February 8, 2019 MRI addendum lumbar, spine w/wo contrast [PTC026321] and on or about May 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321], as

⁶⁶See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁶⁷See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁶⁸See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁶⁹See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

⁷⁰See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁷¹See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁷²See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁷³See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

1960FPPA⁷⁴⁷⁵⁷⁶⁷⁷ — would likely deter a person of ordinary firmness from exercise of First Amendment Rights.⁷⁸

⁷⁴Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

⁷⁵Plaintiff's MRI addendum spine, lumbar w/wo contrast [PCT026321] on or about February 8, 2019, states as follows:

"L3-L4: There is no spinal stenosis or foraminal narrowing. A 6 mm heterogeneous area is noted in the L3 vertebral body, compatible with hemangioma." See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁷⁶Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

⁷⁷Plaintiff's MRI thoracic, spine w/wo contrast [10465997] on or about May 1, 2019, states as follows:

"No scoliosis." See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"Small intraosseous lesions are seen compatible with intraosseous hemangiomas, in the absence of known malignancy." See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁷⁸See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

25. Defendant WUDARSKI *alleged conduct* – retaliated on or about February 8, 2019 MRI addendum lumbar, spine w/wo contrast [PTC026321], as a PA/F⁷⁹⁸⁰⁸¹ – would likely deter a person of ordinary firmness from exercise of First Amendment Rights.⁸²
26. Defendant ORTIZ *alleged conduct* – retaliated on or about February 8, 2019 MRI addendum lumbar, spine w/wo contrast

⁷⁹Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

⁸⁰Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

⁸¹Plaintiff's MRI addendum spine, lumbar w/wo contrast [PCT026321] on or about February 8, 2019, states as follows:

"L3-L4: There is no spinal stenosis or foraminal narrowing. A 6 mm heterogeneous area is noted in the L3 vertebral body, compatible with hemangioma." See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁸²See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

[PTC026321], as a MD⁸³⁸⁴⁸⁵ – would likely deter a person of ordinary firmness from exercise of First Amendment Rights.⁸⁶

27. Defendant PHAM *alleged conduct* – retaliated on or about February 8, 2019 MRI addendum lumbar, spine w/wo contrast

⁸³Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

⁸⁴Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

⁸⁵Plaintiff's MRI addendum spine, lumbar w/wo contrast [PCT026321] on or about February 8, 2019, states as follows:

"L3-L4: There is no spinal stenosis or foraminal narrowing. A 6 mm heterogeneous area is noted in the L3 vertebral body, compatible with hemangioma." See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁸⁶See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

[PTC026321], as a MD⁸⁷⁸⁸⁸⁹ – would likely deter a person of ordinary firmness from exercise of First Amendment Rights.⁹⁰

28. Defendant HUNT *alleged conduct* – retaliated on or about May 1, 2019 MRI lumbar, spine w/wo contrast [PTC028745], as a

⁸⁷Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

⁸⁸Plaintiff's MRI addendum spine, lumbar w/wo contrast [PCT026321] on or about February 8, 2019, states as follows:

"L3-L4: There is no spinal stenosis or foraminal narrowing. A 6 mm heterogeneous area is noted in the L3 vertebral body, compatible with hemangioma." See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁸⁹Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

⁹⁰See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

MD⁹¹⁹²⁹³ – would likely deter a person of ordinary firmness from exercise of First Amendment Rights.⁹⁴

29. Defendant HAGOPAIN *alleged conduct* – retaliated on or about May 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321], as

⁹¹Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

⁹²Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

⁹³Plaintiff's MRI thoracic, spine w/wo contrast [10465997] on or about May 1, 2019, states as follows:

"No scoliosis." See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"Small intraosseous lesions are seen compatible with intraosseous hemangiomas, in the absence of known malignancy." See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁹⁴See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

a D.O. Neuroradiologist⁹⁵⁹⁶⁹⁷ – would likely deter a person of ordinary firmness from exercise of First Amendment Rights.⁹⁸

30. Defendant KIMIAGAREE *alleged conduct* – retaliated on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at

⁹⁵Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

⁹⁶Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

⁹⁷Plaintiff's MRI thoracic, spine w/wo contrast [10465997] on or about May 1, 2019, states as follows:

"No scoliosis." See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"Small intraosseous lesions are seen compatible with intraosseous hemangiomas, in the absence of known malignancy." See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

⁹⁸See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

approx. 1:39 p.m., as a PA⁹⁹¹⁰⁰¹⁰¹ – would likely deter a person of ordinary firmness from exercise of First Amendment Rights.¹⁰²

31. Defendant BIRD *alleged conduct* – retaliated on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.,

⁹⁹Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

¹⁰⁰Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

¹⁰¹Plaintiff's OSI MRI spine - details [2371211] on or about May 9, 2019, states as follows:

"Technique: OSI MRI thoracic spine was performed at Providence Hospital of North Houston ("PHNH") on or about May 1, 2019, i.e., diagnosis of hemangiomas: spinal tumors." See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"No evidence of tumor in the thoracic spinal region." See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"Thoracic spine: Examination of the thoracic spine shows no evidence of tumor." See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁰²See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

as a MD¹⁰³¹⁰⁴¹⁰⁵ – would likely deter a person of ordinary firmness from exercise of First Amendment Rights.¹⁰⁶

32. Defendant HMH, acted through its agency and/or employee *alleged conduct* – retaliated on or about June 12, 2019 (Order ID:

¹⁰³Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

¹⁰⁴Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

¹⁰⁵Plaintiff's OSI MRI spine - details [2371211] on or about May 9, 2019, states as follows:

"Technique: OSI MRI thoracic spine was performed at PHNH on or about May 1, 2019, i.e., diagnosis of hemangiomas: spinal tumors." See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"No evidence of tumor in the thoracic spinal region." See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"Thoracic spine: Examination of the thoracic spine shows no evidence of tumor." See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁰⁶See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

272980141) MRI lumbar, spine [MRN: 109023008], as
HMH¹⁰⁷¹⁰⁸¹⁰⁹ – would likely deter a person of ordinary firmness
from exercise of First Amendment Rights.¹¹⁰

33. Defendant RAFATI *alleged conduct* – retaliated on or about June
12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN:

¹⁰⁷Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

¹⁰⁸Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

¹⁰⁹Plaintiff's (Order ID: 272980141) MRI lumbar, spine [MRN 109023008] on or about June 12, 2019, states as follows:

"Low back pain w/o sciatica (M54.5,G89.29)." See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹¹⁰See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

109023008], as a MD¹¹¹¹¹²¹¹³ – would likely deter a person of ordinary firmness from exercise of First Amendment Rights.¹¹⁴

34. There is a *causal connection* between *the retaliatory actions* and *the adverse effect* on speech and act.¹¹⁵ The Supreme Court has recently held that the temporal proximity between *the adverse action* on or about February 8, 2019 MRI addendum lumbar, spine w/wo contrast [PTC026321]¹¹⁶ and on or about May 1, 2019 MRI

¹¹¹Plaintiff's Persian Gulf Exam on or about November 7, 2016, states as follows:

"Army joined in 2000 to 2003, in Iraq January 2003 to May 2003, was in Tikrit, involved in burning the human waste takes all day, did it once a week for twenty (20) weeks, veteran was involved in burn pit duties in Iraq, suffers from chronic headaches since then, chronic intermittent headaches, tensional type, headaches 1-2 times a week, depression with insomnia, skin-scattered small round white spots on arm and hives over arms, worked as a state employee for 6.5 years and not worked since 2011." See Ex. FF, GG & HH.

¹¹²Plaintiff's KSP Orthopaedic Center, PA on or about March 1, 2019, states as follows:

"Pediatric bone/soft tissue tumors and masses, adult bone/soft tumors and masses, benign and malignant bone/soft tumors, sarcomas and metastatic disease involving bone." See Ex. G, H, I, GG & HH.

"For continuity care, we will fax records to MD Anderson, and call them to confirm receipt of the records. They (MD Anderson) will call you within 48 hours to set up an appointment for you with the appropriate doctor." See Ex. G, H, I, GG & HH.

¹¹³Plaintiff's (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008] on or about June 12, 2019, states as follows:

"Low back pain w/o sciatica (M54.5,G89.29)." See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹¹⁴See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹¹⁵See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹¹⁶See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

thoracic, spine w/wo contrast [PTC028745]¹¹⁷ and on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.¹¹⁸ and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008],¹¹⁹ must be close, less than three (3) months, between *the protected activity*¹²⁰¹²¹ on or about February 1, 2019 MRI lumbar, spine w/wo contrast [PTC026321]¹²² and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745]¹²³ and on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:27 p.m.¹²⁴ and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008],¹²⁵ and *the adverse action* on or about February 8, 2019 MRI addendum lumbar, spine w/wo contrast [PTC026321]¹²⁶ and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745]¹²⁷ and on or about May 9, 2019 OSI

¹¹⁷See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹¹⁸See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹¹⁹See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹²⁰See *Clark County School Dist. v. Breeden*, 532 U.S. 268, 273, 121 S. Ct. 1508 (2001).

¹²¹See *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir.); *Rhodes v. Tuscaloosa Co. Bd. OF Ed.*, 935 F. Supp. 2d 1226, 1254 (N.D. Ala. 2013) ("A plaintiff satisfies (*the causation*) element by showing that the decision-maker knew of the protected activity, and that a close temporal proximity existed between this awareness and the adverse ... action.") (emphasis added).

¹²²See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹²³See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹²⁴See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹²⁵See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹²⁶See Ex. E, A, B, C, D, E, F, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹²⁷See Ex. J, K, L, M, N, O, P, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

MRI – Details [MRN: 2371211] at approx. 1:39 p.m.¹²⁸ and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008].¹²⁹

35. As a *proximate* consequence of the violations of § 1981, via 42 U.S.C. § 1983, by defendants 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, plaintiff suffered and continues to suffer bodily injuries such as pain and will continue to suffer damages to his professional life and future career opportunities, future pecuniary losses, emotional pain, inconvenience, mental anguish, loss of enjoyment in life, and non-pecuniary damages.¹³⁰
36. As a *proximate* consequence of the violations of § 1981, via 42 U.S.C. § 1983, by defendants 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMH, and RAFATI, each of them, plaintiff's personal property was loss, damaged or destroyed.¹³¹

¹²⁸See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹²⁹See Ex. Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹³⁰See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹³¹See Ex. KK & LL.

37. Plaintiff has satisfied all administrative prerequisites to bring this claim outlined herein.¹³²¹³³¹³⁴

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, plaintiff prays for judgment against defendants, 1960FPPA, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, HMM, and RAFATI, each of them, on all cause of action as follows:

- a. For special damages for placement in the position(s) in which he would have worked absent defendants WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, and RAFATI, each of them, discriminatory treatment on or about February 8, 2019 addendum MRI lumbar, spine w/wo contrast [PTC026321] and on or about May 1, 2019 MRI thoracic, spine w/wo contrast [PTC028745] and on or about May 9, 2019 OSI

¹³²In *Patsy v. Board of Regents* the Supreme Court held that 42 U.S.C. § 1983 does not require exhaustion of state administrative remedies. Also, in *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982), the Supreme Court determined that there is no general exhaustion of remedies requirement for plaintiff's pursuing claims under 42 U.S.C. § 1983.

¹³³§ 1981 does not provide a cause of action against state actors; instead, claims against state actors or allegations of § 1981 violations must be brought pursuant to 42 U.S.C. § 1983. *See Butts v. County of Volusia*, 222 F.3d 891, 892-94 (11th Cir. 2000). However, a four-year statute of limitations applies to "civil action[s] arising under an Act of Congress enacted after" December 1, 1990. *See* 28 U.S.C. § 1658(a). In this case, Williams's § 1981 claims were made possible by the 1991 amendments to § 1981; thus, those claims arise under a post-1990 enactment. *See Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 124 S. Ct. 1836 (2004).

¹³⁴*See* Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

- MRI – Details [MRN: 2371211] at approx. 1:39 p.m. and on or about June 12, 2019 (Order ID: 272980141) MRI lumbar, spine [MRN: 109023008];¹³⁵ and on or, in lieu thereof, front pay according to proof;¹³⁶
- b. For post-judgment interest as allowed by law;
 - c. For costs of suit incurred herein;
 - d. For special damages for back pay according to proof;¹³⁷
 - e. For general damages for in the amount of not less than \$50,000,000 jointly against defendants, WUDARSKI, ORTIZ, PHAM, HUNT, HAGOPAIN, KIMIAGAREE, BIRD, and RAFATI, each of them, for endured physical pain, emotional suffering, mental anguish, embarrassment, loss of enjoyment, both past and future according to proof;¹³⁸

¹³⁵See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹³⁶See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹³⁷See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹³⁸See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

- f. For personal property was loss, damaged or destroyed according to proof;¹³⁹ and
- g. Such other legal or equitable relief, including injunctive relief, as may be appropriate to effectuate the purposes of § 1981, via 42 U.S.C. § 1983 enjoining defendants 1960FPPA, and HMH, each of them, their agents, successors, employees, attorneys, and those acting in concert with defendants 1960FPPA, and HMH, each of them, or at defendants 1960FPPA, and HMH, each of them, request from violating § 1981, via 42 U.S.C. § 1983, or to which he may be entitled.¹⁴⁰

THIRD CAUSE OF ACTION – § 504 OF THE
REHABILITATION ACT OF 1973, CODIFIED IN 29 U.S.C. §
794
COUNT III
DISPARATE TREATMENT
(DISABILITY DISCRIMINATION)
Against Defendant, MD ANDERSON¹⁴¹

38. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.
39. In taking the actions alleged herein, defendant MD Anderson, acted through its employees *intentionally* discriminated against plaintiff on the

¹³⁹See Ex. KK & LL.

¹⁴⁰See Ex. A, B, C, D, E, F, FF, GG, HH, G, H, I, J, K, L, M, N, O, P, FF, GG, HH, G, H, I, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, Y, FF, GG, HH, G, H, I, Z, AA, BB, CC, DD, EE, II, JJ, KK & LL.

¹⁴¹See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

bases of disability discrimination in violation of § 504 of the Rehabilitation Act on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.¹⁴²

40. Defendant MD Anderson, acted through its employees *condones* and *allows* disability-based discrimination. Defendant MD Anderson, acted through its employees actions were in violation of § 504 of the Rehabilitation Act on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.,¹⁴³ and were taken with *malice* or *reckless indifference* to the federally-protected rights of the plaintiff.¹⁴⁴

41. *The plaintiff is an individual with a disability under the § 504 of the Rehabilitation Act*, as he is disabled with a diagnosis of hemangiomas: spinal tumors at PHNH on or about May 1, 2019, which substantially impairs various major life activities, defined in 29 U.S.C. § 705(20)(B), any person who has a disability as defined in section 12101 of title 42(2)(B), i.e., functions of the normal cell growth.¹⁴⁵

¹⁴²*See* Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁴³*See* Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁴⁴*See* Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁴⁵Plaintiff's OSI MRI spine - details [2371211] on or about May 9, 2019, states as follows:

"Technique: OSI MRI thoracic spine was performed at PHNH on or about May 1, 2019, i.e., diagnosis of hemangiomas: spinal tumors." *See* Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL. And, second diagnosis, i.e., Thoracic spine tumor (D49.2). II, K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

42. *The plaintiff is otherwise qualified for participation in the program; i.e., that he was otherwise eligible to receive medical benefits.*¹⁴⁶

43. Because of plaintiff's disability, he has been the target of abuse culminating in the participation in a program, i.e., OSI MRI – Details [MRN: 2371211] on or about May 9, 2019 at approx. 1:29 p.m.¹⁴⁷ Said defendant MD Anderson, acted through its employees discriminating against plaintiff, *the plaintiff is being excluded from the participation in, being denied the benefits of, or being subjected to discrimination under the program solely by reason of his disability*, i.e., OSI MRI – Details [MRN: 2371211] on or about May 9, 2019 at approx. 1:39 p.m.¹⁴⁸

44. Defendant MD Anderson is subject to the provision of § 504 of the Rehabilitation Act by virtue of its receipt of federal funds and *the relevant program receives federal financial assistance*, and thus not protected pursuant to § 504 of the Rehabilitation Act itself, section 2000d-7 is a

¹⁴⁶Plaintiff has Humana Medicare Advantage – Humana Choice Medicare PPO. *See* Ex. U & V.

¹⁴⁷*See* Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁴⁸Plaintiff's OSI MRI spine - details [2371211] on or about May 9, 2019, states as follows:

"Technique: OSI MRI thoracic spine was performed at PHNH on or about May 1, 2019, i.e., diagnosis of hemangiomas: spinal tumors." *See* Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"No evidence of tumor in the thoracic spinal region." *See* Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"Thoracic spine: Examination of the thoracic spine shows no evidence of tumor." *See* Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

valid exercise of Congress' Spending Power -- conditioning the receipt of federal funds on the waiver of Eleventh Amendment immunity.¹⁴⁹¹⁵⁰

45. As a *proximate* consequence of the violations of § 504 of the Rehabilitation Act, by defendant MD Anderson, plaintiff suffered and continues to suffer bodily injuries such as pain and will continue to suffer damages to his professional life and future career opportunities, future pecuniary losses, emotional pain, inconvenience, mental anguish, loss of enjoyment in life, and non-pecuniary damages.¹⁵¹

46. As a *proximate* consequence of the violations of § 504 of the Rehabilitation Act Sec. 504, by defendant MD Anderson, plaintiff's personal property was loss, damaged or destroyed.¹⁵²

¹⁴⁹*See Fite v. Univ. of Texas MD Anderson Cancer Ctr.*, Civil Action No. 12-cv-3739, 2013 WL 3338587 (S.D. Tex. July 2, 2013) (holding that MD Anderson, as a component institution of the University of Texas system, "enjoys the same sovereign immunity as the State of Texas itself"). If the state or local government entities receive funding whatever purpose, they cannot claim sovereign immunity if they are sued in federal court for discrimination. The United States Code, Title 42, Section 2000d-7 explicitly says this. *See Clark v. California*, 123 F.3d 1267, 1271 (9th Cir. 1997), cert. denied, 118 S. Ct. 2340 (1998); *Beasley*, 3 F. Supp.2d at 1310-1312; *Sandoval*, 7 F. Supp.2d at 1269, 1271-1272; *Litman v. George Mason Univ.*, 5 F. Supp.2d 366, 375-376 (E.D. Va. 1998). Defendant MD Anderson' Operating Fiscal Year Ending 2018 on or about August 31, 2018. *See* Ex. X.

¹⁵⁰Article I, § 8, cl. 1 of the United States Constitution provides:

"The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States." *See* Ex. X.

¹⁵¹*See* Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁵²*See* Ex. KK & LL.

47. Plaintiff has satisfied all administrative prerequisites to bring this claim outlined herein.¹⁵³¹⁵⁴

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, plaintiff prays for judgment against defendant MD Anderson on all cause of action as follows:

- a. For post-judgment interest as allowed by law;
- b. For costs of suit incurred herein;
- c. For general damages for in the amount of not less than \$300,000 against defendant MD Anderson for

¹⁵³*See Camenisch v. University of Tex.*, 616 F.2d 127 (5th Cir. 1980), *vacated on other grounds and remanded*, 451 U.S. 390 (1981) (private suits for the enforcement of individual actions are appropriate in § 504 of the Rehabilitation Act cases, without exhaustion of administrative mechanisms); *Fells v. Brooks*, 522 F. Supp. 30, 33 (D.D.C. 1981) (private right of action exists under § 504 of the Rehabilitation Act, "and the existence of [this right] is not contingent upon the exhausted of administrative remedies . . ."); *Patton v. Dumpson*, 498 F. Supp. 933, 940 (S.D.N.Y. 1980) ("[I]t is well established that exhaustion is not required if the only available administrative remedy is plainly inadequate.").

¹⁵⁴When a federal statute does not contain a limitations period (as is the case for § 504 of the Rehabilitation Act), the settled practice is to borrow an "appropriate" statute of limitations from state law. *See Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660 (1987), partially superseded by statute as stated in *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 371 (2004); *see also* 42 U.S.C. § 1988. Of course, this rule only applies to statutes enacted prior to passage of 28 U.S.C. § 1658, which now governs in such circumstances. *See* 28 U.S.C. § 1658(a); *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 371 (2004). Texas's two-year statute of limitations for personal injury actions, which is set out in Section 16.003 of the Texas Civil Practice and Remedies Code. Section 16.003 states in relevant part:

"Except as provided by Sections 16.010, 16.0031, and 16.0045, a person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues." *See* Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

endured physical pain, emotional suffering, mental anguish, embarrassment, loss of enjoyment, both past and future according to proof;¹⁵⁵¹⁵⁶

- d. For personal property was loss, damaged or destroyed according to proof.¹⁵⁷

**FOURTH CAUSE OF ACTION – § 504 OF THE
REHABILITATION ACT OF 1973, CODIFIED IN 29 U.S.C. §**

794

COUNT IV

DISPARATE TREATMENT

(RETALIATION)

Against Defendant, MD ANDERSON¹⁵⁸

48. Plaintiff adopts and re-alleges each and every allegation contained in this Complaint as if set out anew herein.

49. In taking the actions alleged herein, defendant MD Anderson, acted through its employees *intentionally* retaliated against plaintiff on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m. in violation of § 504 of the Rehabilitation Act, and which is attached as Exhibits Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK and LL to this Complaint.

50. Defendant MD Anderson, acted through its employees *condones* and *allows* retaliation. Said actions of defendant MD Anderson, acted through its employees were *aware* in violation of § 504 of the

¹⁵⁵See 42 U.S.C. § 1981a.(b)(3)(D).

¹⁵⁶See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁵⁷See Ex. KK & LL.

¹⁵⁸See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

Rehabilitation Act on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.,¹⁵⁹ and were taken with *malice* or *reckless indifference* to the federally-protected rights of plaintiff on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:27 p.m.¹⁶⁰

51. On or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:27 p.m. plaintiff submitted to defendant MD Anderson, acted through its employees by complaining of discrimination on the bases of plaintiff disability against PHNH.¹⁶¹ Therefore, making expression by engaging in a statutorily protected activity "*because such individual has opposed any act or practice made unlawful by this chapter*"¹⁶² from § 12203(a) of the ADA because the Rehabilitation Act 29 U.S.C. § 794(d) incorporates the anti-retaliation provision from § 12203(a) of the ADA on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:27 p.m.¹⁶³

¹⁵⁹See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁶⁰See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁶¹See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁶²"The Rehabilitation Act incorporates the anti-retaliation provision from § 12203(a) of the Americans with Disabilities Act ("ADA"), 29 U.S.C. §§ 791(g) and 793(d), as well as 29 U.S.C. § 794(d); See Sutton v. Lader, 185 F.3d 1203, 1207 n. 5 (11th Cir.1999) (stating that the standard for determining liability under the Rehabilitation Act is the same as under ADA, in the context of a discrimination claim)." Under the ADA's anti-retaliation provision, "[n]o person shall discriminate against an individual *because such individual has opposed any act or practice made unlawful by this chapter*." 42 U.S.C. § 12203(a)." See Burgos-Stefanelli v. Secretary, U.S. Department of Homeland Security, 410 Fed. Appx. 243 (11th Cir. 2011).

¹⁶³See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

52. Defendant MD Anderson, acted through its employees have retaliated against plaintiff's original Complaint of discrimination on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.¹⁶⁴

53. A cause finding was issued on said Complaint, after Conciliation failed, the matter was investigated by MD Anderson, acted through its employees on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:27 p.m.¹⁶⁵

54. Defendant MD Anderson, acted through its employees *alleged conduct* – retaliated on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m., as MD Anderson¹⁶⁶ – would likely deter a person of ordinary firmness from exercise of § 504 of the Rehabilitation Act.¹⁶⁷

¹⁶⁴See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁶⁵See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁶⁶Plaintiff's OSI MRI spine - details [2371211] on or about May 9, 2019, states as follows:

"Technique: OSI MRI thoracic spine was performed at PHNH on or about May 1, 2019, i.e., diagnosis of hemangiomas: spinal tumors." See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"No evidence of tumor in the thoracic spinal region." See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

"Thoracic spine: Examination of the thoracic spine shows no evidence of tumor." See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁶⁷See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

55. There is a *causal connection* between *the adverse action* was related to *protected activity*.¹⁶⁸ The Supreme Court has recently held that the temporal proximity between *the adverse action* on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.¹⁶⁹ and was related to *the protected activity* on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:27 p.m.,¹⁷⁰ must be close less than three (3) months, between *the plaintiff participated in a statutorily protected activity*¹⁷¹¹⁷² on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:27 p.m.¹⁷³ and *the plaintiff suffered an adverse action* on or about May 9, 2019 OSI MRI – Details [MRN: 2371211] at approx. 1:39 p.m.¹⁷⁴

56. As a *proximate* consequence of the violations of § 504 of the Rehabilitation Act, by defendant MD Anderson, plaintiff suffered and continues to suffer bodily injuries such as pain and will continue to suffer damages to his professional life and future career opportunities, future

¹⁶⁸See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁶⁹See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁷⁰See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁷¹See *Clark County School Dist. v. Breeden*, 532 U.S. 268, 273, 121 S. Ct. 1508 (2001).

¹⁷²See *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir.); *Rhodes v. Tuscaloosa Co. Bd. OF Ed.*, 935 F. Supp. 2d 1226, 1254 (N.D. Ala. 2013) ("A plaintiff satisfies *(the causation)* element by showing that the decision-maker knew of the protected activity, and that a close temporal proximity existed between this awareness and the adverse ... action.") (emphasis added).

¹⁷³See Ex. K, Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁷⁴See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

pecuniary losses, emotional pain, inconvenience, mental anguish, loss of enjoyment in life, and non-pecuniary damages.¹⁷⁵

57. As a *proximate* consequence of the violations of § 504 of the Rehabilitation Act, by defendant MD Anderson, plaintiff's personal property was loss, damaged or destroyed.¹⁷⁶

58. Plaintiff has satisfied all administrative prerequisites to bring this claim outlined herein.¹⁷⁷¹⁷⁸

¹⁷⁵See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

¹⁷⁶See Ex. KK & LL.

¹⁷⁷See *Camenisch v. University of Tex.*, 616 F.2d 127 (5th Cir. 1980), *vacated on other grounds and remanded*, 451 U.S. 390 (1981) (private suits for the enforcement of individual actions are appropriate in § 504 of the Rehabilitation Act cases, without exhaustion of administrative mechanisms); *Fells v. Brooks*, 522 F. Supp. 30, 33 (D.D.C. 1981) (private right of action exists under § 504 of the Rehabilitation Act, "and the existence of [this right] is not contingent upon the exhausted of administrative remedies . . ."); *Patton v. Dumpson*, 498 F. Supp. 933, 940 (S.D.N.Y. 1980) ("[I]t is well established that exhaustion is not required if the only available administrative remedy is plainly inadequate.").

¹⁷⁸When a federal statute does not contain a limitations period (as is the case for § 504 of the Rehabilitation Act), the settled practice is to borrow an "appropriate" statute of limitations from state law. See *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660 (1987), partially superseded by statute as stated in *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 371 (2004); see also 42 U.S.C. § 1988. Of course, this rule only applies to statutes enacted prior to passage of 28 U.S.C. § 1658, which now governs in such circumstances. See 28 U.S.C. § 1658(a); *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 371 (2004). Texas's two-year statute of limitations for personal injury actions, which is set out in Section 16.003 of the Texas Civil Practice and Remedies Code. Section 16.003 states in relevant part:

"Except as provided by Sections 16.010, 16.0031, and 16.0045, a person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues." See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

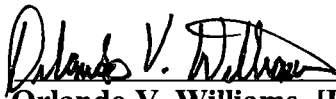
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, plaintiff prays for judgment against defendant MD Anderson on all cause of action as follows:

- a. For post-judgment interest as allowed by law; and
- b. Such other legal or equitable relief, including injunctive relief, as may be appropriate to effectuate the purposes of § 504 of the Rehabilitation Act enjoining defendant MD Anderson, their agents, successors, employees, attorneys, and those acting in concert with defendant MD Anderson, or at defendant MD Anderson request from violating § 504 of the Rehabilitation Act, or to which he may be entitled.¹⁷⁹

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,



Orlando V. Williams, [Pro Se]

PLAINTIFF ADDRESS:

ORLANDO V. WILLIAMS
P.O. Box 383093
Birmingham, Alabama 35238
Tel: (205) 332-2043
Email: **octoberhotboy@yahoo.com**

¹⁷⁹See Ex. Q, K, J, L, M, N, R, S, T, U, V, W, X, FF, GG, HH, G, H, I, GG, HH, II, JJ, KK & LL.

PLEASE SERVE DEFENDANTS BY
CERTIFIED MAIL RETURN RECEIPT REQUESTED:

1960 FAMILY PRACTICE PA
c/o Credentialing Department Ana Borja
P.O. Box 4356
Department 667
Houston, Texas 77210
Tel: (281) 586-3888

GABRIELLE WUDARSKI
c/o Credentialing Department Ana Borja
P.O. Box 4356
Department 667
Houston, Texas 77210
Tel: (281) 586-3888

FRANCISCO ORTIZ
c/o Credentialing Department Ana Borja
P.O. Box 4356
Department 667
Houston, Texas 77210
Tel: (281) 586-3888

DANG H. PHAM
c/o Credentialing Department Ana Borja
P.O. Box 4356
Department 667
Houston, Texas 77210
Tel: (281) 586-3888

MADELINE A. HUNT
c/o Credentialing Department Ana Borja
P.O. Box 4356
Department 667
Houston, Texas 77210
Tel: (281) 586-3888

TARA A. HAGOPIAN
c/o Credentialing Department Ana Borja
P.O. Box 4356
Department 667
Houston, Texas 77210
Tel: (281) 586-3888

**UNIVERSITY OF TEXAS MD ANDERSON
CANCER CENTER**

c/o Professor Jorge Enrique Maguera
1515 Holcombe BLVD.
M.D. Anderson Cancer CTA,
Lymphoma/Myeloma
Department 429
Houston, Texas 77030
Tel: (713) 792-2860

KRYSTAL J. KIMIAGAREE

c/o Professor Jorge Enrique Maguera
1515 Holcombe BLVD.
M.D. Anderson Cancer CTA,
Lymphoma/Myeloma
Department 429
Houston, Texas 77030
Tel: (713) 792-2860

JUSTIN E. BIRD

c/o Professor Jorge Enrique Maguera
1515 Holcombe BLVD.
M.D. Anderson Cancer CTA,
Lymphoma/Myeloma
Department 429
Houston, Texas 77030
Tel: (713) 792-2860

HOUSTON METHODIST HOSPITAL

c/o Senior Vice President Bret Thomas Curran
6565 Fannin Street
Houston, Texas 77030
Tel: (713) 790-3311

TAREK SALAH RAFATI

c/o Tarek Salah Rafati, M.D.
25305 IH 45 N
Spring, Texas 77380
Tel: (832) 403-2166